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Observations of the Permanent Mission of the Republic of the Union of Myanmar in Geneva on the report of the Special Rapporteur on the situation of human rights in Myanmar to the 28th session of the Human Rights Council*

1. The Special Rapporteur visited Myanmar from 7 to 16 January 2015 and the Government facilitated the visit to enable the Special Rapporteur to go and meet with the people at her choice. Myanmar always opposes the country-specific resolutions, nevertheless, successive Special Rapporteurs on the situation of human rights in Myanmar have been regularly invited. It was our hope that the openness and cooperation of the government and its people to the Special Rapporteur would help her to better understand the situation on the ground and produce a balanced report.

2. Regrettably, however, we saw some flaws in the organization of meetings during the visits. Because of these flaws and deficiencies, contents contained in the report are not free from bias, unfounded allegations, speculations and prejudgments.

3. During the visit, the Special Rapporteur met with some selective media personnel and CSOs members. It is not known how these personnel were selected and on which basis. It is, therefore, contents contained in the report are not able to reflect the views and opinions of those who have different perspectives.

4. The draft report was shared with the Permanent Mission after delaying one day than expected and the Office of the High Commissioner for Human Rights informed the latter that it was because of combining inputs from the OHCHR personnel on the ground. Article 3 (a) of the Code of Conduct for Special Procedures Mandate Holders of the Human Rights Council contained in HRC Resolution 5/2 clearly mentions that mandate-holders are independent United Nations experts. While discharging their mandate, they shall: Act in an independent capacity, and exercise their functions in accordance with their mandate, through a professional, impartial assessment of facts based on internationally recognized human rights standards, and **free from any kind of extraneous influence, incitement, pressure, threat or interference, either direct or indirect, on the part of any party,**

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whether stakeholder or not, for any reason whatsoever, the notion of independence being linked to the status of mandate-holders, and to their freedom to assess the human rights questions that they are called upon to examine under their mandate.

5. The Government of Myanmar has issued visas for the OHCHR personnel on case by case basis. Nevertheless, it has never come to our knowledge of such involvement of the Office in the report of the Special Rapporteur.

6. The various achievements made in Myanmar through its democratization and multifaceted reforms have been well received in the international community. Along with the emergence of the constitutional government, the hluttaw (parliament) started functioning at the same time. From 2011 to present, a total of 119 laws were either newly enacted or amended: 64 new laws were enacted, 55 laws were amended and 14 laws were repealed. Accordingly, the government enacted bylaws and introduced administrative measures and adopted policies to be in line with the new laws. Significant steps that we have taken in the areas of promotion and protection of human rights allow Myanmar to stand proudly in our region and beyond.

7. Reference is made to paragraph 4 of the report. We are in disagreement with the observations of the Special Rapporteur, in connection with freedom of assembly and expression, saying that restrictions on democratic space remain severe, or may have worsened. Since August 2012, all publications have been exempted from pre-publishing censorship. In January 2013, the government dissolved the Press Scrutiny and Registration Board. Publication of private daily newspapers has begun since April 2013. Currently, there are a dozen private dailies in the country. Nineteen foreign news agencies have opened offices in Myanmar.

8. No restrictions are imposed on the use of internet. People in Myanmar are now increasingly using the social media. The freedom to openly discuss and debate politics, which is one of the most important indicators of a modern democratic society, is growing as citizens are now able to express their opinions freely through the news media and social networks.

9. Reference is made to paragraph 5 of the report, which says insufficient consultations had taken place in the development of the Broadcasting Law. The Broadcasting Law was drafted with the cooperation with the UNESCO in 2012. Four consultations were conducted with the participation of domestic as well as foreign media personnel, the United Nations agencies, NGOs, INGOs and other interested parties in 2013. The draft law was published in daily newspapers on 12 March 2014 soliciting comments from the public. Recommendations and comments from the public were received through the website of the President Office. People have also been able to send in their inputs to the Bill Committee of the Hluttaw.

10. Reference is made to paragraph 6 of the report. With regard to the Printing and Publishing Enterprise Law, no censorship is imposed; but it requires registration. Opinions and comments from relevant stakeholders including publishers were incorporated in the law during its drafting stage.

11. Reference is made to paragraph 7 of the report. The Media Law was enacted in March 2014, which allows investigative journalism to report on facts and information that citizens need to know and news reflecting the opinion and voices of the people. Journalists can do research and request documents, facts and figures of public interest from ministries and organizations, with the exception of classified materials. When media personnel seek information from governmental organizations, they are allowed to do so but need to follow the rules set by the relevant organizations in entering into and locating at the designated areas for them. Furthermore, the law doesn't include prison sentence but only fines for

violation of its provisions. Nevertheless, the media personnel need to abide by the existing laws as other citizens do.

12. Reference is made to paragraph 8 of the report. The sentencing of individuals who were mentioned in it was not because of their reporting activities but because of their trespassing on a restricted military facility. It was found out that some of the individuals involved in the case had joined the particular journal just a week before, without receiving any proper training in journalism.

13. The state of freedom of expression in Myanmar can be compared to that of other countries in the region and beyond. The Special Rapporteur should see the situation from the bird's eye view.

14. Reference is made to paragraph 10 and 60 of the report. The Government never tolerates any acts or expressions that would lead to hatred between religions and races. At the highest level of the Government, President U Thein Sein has made it public on several occasions that incitements and spreading of hate speech are intolerable. Interfaith Friendship Groups at the township level were established and awareness-raising campaigns like using social media were conducted at the grassroots. These efforts effectively prevent spreading of rumors and incitements, thereby leading to a more resilient society.

15. Reference is made to paragraph 11 of the report. Htin Lin Oo was indicted on charges of outraging religious feelings of other people. His political party (National League for Democracy - NLD) issued a statement, saying that Htin Lin Oo's comments represented his own opinions, not those of the NLD.

16. Reference is made to paragraphs 12, 13, 14, 15, 17 and 18 of the report. In July 2012, the Peaceful Gathering and Procession Law came into force. Since then, people have been able to organize protests and exercise the rights to freedom of peaceful assembly and association in accordance with the law. In 2014, a total of 445 applications for peaceful protests have been facilitated across the country. No one is arrested for exercising their right to peaceful assembly. 27 prisoners mentioned in paragraph 15 were sentenced for the crimes they committed and many of them were involved in explosion activities of public transportation. Sein Than, Wai Lu, Htin Kyaw and other individuals mentioned in the paragraphs have been taken legal actions for violating existing laws. No one remains in prison on political grounds.

17. Main responsibility of law enforcement agencies is to maintain law and order and take necessary actions against anyone who violated the existing laws. If people have concerns about a law, people's representatives in Hluttaw are able to introduce necessary amendments. Nevertheless, citizens are required to abide by the existing laws.

18. Reference is made to paragraph 16. The Committee for Scrutinizing the Remaining Prisoners was formed in February 2013. The committee convened 12 meetings and submitted the list of prisoners to the President. A total of 14 amnesties were granted before and after the establishment of the committee. The Committee was reconstituted on 15 January 2015. Among the 28-members of the Committee, 21 are representatives of non-government organizations.

19. Reference is made to paragraph 19 of the report. With regard to the incident mentioned in the paragraph, riots between the protestors and the security forces caused the death of Daw Khin Win in Latpadaungtaung Copper Mine Project on 22 December 2014. It also resulted in the injury of 11 police personnel as well as 11 protestors. The Myanmar National Human Rights Commission inquired about the case and made recommendations. The case is being heard in the Sarlingyi township court.

20. Reference is made to paragraphs 22 and 23. The government has issued temporary identity cards, better known as "white cards", to those who have been residing in the

country but has not yet been verified as a citizen. According to the Law Amending the Political Parties Registration Law, citizens can form and become members of the political parties. The Constitutional Tribunal has ruled recently that it is not in line with the State Constitution if the "white card" holders are allowed to vote in a constitutional referendum. It is for the citizens alone to decide their country's future.

21. Reference is made to paragraphs 25. A new Hluttaw committee to implement constitutional changes suggested by the former Joint Parliamentary Constitution Review Committee has been functioning. It is for the peoples of Myanmar alone to decide which provisions of the state constitution are to be amended. It is not for the Special Rapporteur to intervene in domestic affairs of a sovereign state, which is beyond her mandate.

22. Reference is made to paragraphs 27, 28, 29 and 30. Regarding the four new bills, which are now before the parliament for debate, they have been widely circulated and subjected to a very close scrutiny by the people's representatives in the Parliament. The legislative process on these bills is far from completion. Prejudging the outcome of this ongoing legislative process is inappropriate. The Government of Myanmar extended its invitation and its best cooperation to the Special Rapporteur throughout the visit. Since the inter-communal violence broke out in Rakhine State in 2012 and in a few parts of the country in 2013, the communities have been able to prevent the recurrence of similar incidents, thanks to their time-honoured tradition of tolerance and harmony. The visit of the Special Rappoteur should not leave the communities of Myanmar behind with discord, distrust and incitement.

23. Reference is made to paragraph 35 of the report. It would help the Government to verify the allegations if the Special Rapporteur could provide detailed information.

24. Reference is made to paragraphs 36 and 37 of the report. In June 2012, the Government and the UN signed a Joint Plan of Action to prevent the underage military recruitment. Forty-two underage soldiers were discharged on 23 Juanary 2015 under the arrangement of the Commander-in-Chief's Office (Army) and the Country Task Force on Monitoring and Reporting (CTFMR). It was the ninth time of its kind since the signing of the Joint Action Plan. Legal and administrative actions have been taken against 50 officers and 277 other ranks, in accord with the military code of conduct.

25. Reference is made to paragraph 38 of the report. In connection with the inter-communal violence that broke out in Rakhine State in 2012, everyone who committed crimes or got involved in the crimes, were punished regardless of their race and religion. To date, a total of 738 persons have been serving their sentences. With regard to the false report in January 2014, separate independent investigations were conducted by the Rakhine Investigation Commission, the Myanmar National Human Rights Commission and an independent investigation commission formed by the President exclusively for that purpose. The findings of all these Commissions are consistent. The findings concluded that Police Sgt Aung Kyaw Thein was no longer alive, having been murdered, and found no basis for the allegations posted on some internet blogs.

26. Reference is made to paragraph 39 of the report. The Rakhine Action Plan is in its final stages and not yet approved. We cannot comprehend the observations of the Special Rapporteur on the plan, which she has not yet seen.

27. Reference is made to paragraph 41 of the report. The paragraph is technically incorrect. If persons showed their identity cards, it is understood that their citizenship status is clear, and therefore, they are not required to take part in the citizenship verification process. There is no restriction for those whose citizenship status is clear and some persons remain staying in camps as they feel it is safer for them to do so. The intension of portraying this issue from the religious perspective is incomprehensible.

28. Reference is made to paragraphs 42 and 43 of the report. For those whose citizenship status is clear, there is no restriction on their freedom of movement. But for those whose citizenship status is not clear, they need to obtain travel permissions. In Myaypone township, those who currently granted citizens feel safe to live in the camps. There is no condition detention or restriction on their freedom of movement. The contents of the paragraph are misleading.

29. Reference is made to paragraphs 44 and 45 of the report. Humanitarian assistance have been provided with the presence of the UN agencies and other INGOs. With regard to a UN national staff mentioned in paragraph 45, the incident happened when he was drunk outside the hour of performing his work duties. It was a fight between the two individuals. The three INGO national staff have been sentenced for their involvement in arson attacks in 2012.

30. Reference is made to paragraph 46 of the report. The phraseology "Rohingya" is non-existent in Myanmar's ethnic history. It is also the case with the census taken in colonial period as well as in 1973 and 1983 census. In November last year, the Parliament unanimously adopted an emergency motion calling for objection to the use of the word "Rohingya". This word has been maliciously used by a group. They are using this false identity to claim an ethnic minority status and to promote their separatist movements. Locally, they are known as Bangalis and they speak the other language. Self-identification does not exist as a right under international law.

31. Myanmar rejects the phraseology "Rohingya" mentioned paragraphs 22, 38, 39, 40, 41, 46, 47, 68(a) and 68(b) of the report.

32. Reference is made to paragraph 48 of the report. It is not clear how the numbers and figures contained in the UNHCR report entitled "South-east Asia Irregular Maritime movements, January-November 2014" were collected. The report itself stated, "Irregular maritime movements are by their nature clandestine, making the data on such movements difficult to independently verify." The report contained activities and involvements of smugglers.

33. Reference is made to paragraphs 49 and 62 of the report. Meanwhile, to minimize possible negative impacts of investment and business activities, Myanmar has earnestly introduced policies, laws, rules and regulations. For instance, the Foreign Investment Law listed some restricted or prohibited business activities such as those that can affect the traditional culture and customs of the national races, those that can affect the public health, those that can cause damage to the natural environment and ecosystem, among others. The Myanmar Investment Commission announced in August 2014 the list of economic activities which require Environmental Impact Assessment. The government encourages the local companies to join the UN Global Compact. Currently, 120 local companies have become members of the UN Global Compact network. To promote responsible business and investment in Myanmar, companies are encouraged to devote at least 1-5% of annual net profit towards Corporate Social Responsibility (CSR) activities. Myanmar is committed to developing and managing its natural resources in a transparent manner in the best interests of the people. Myanmar is now an Extractive Industries Transparency Initiative-EITI candidate country.

34. Reference is made to paragraph 50 of the report. Use of force was unavoidable in the case of non-peaceful protests or violent mob attacks against the police. In some cases, mobs even abducted police personnel. There is no limitation or restriction imposed on the people who practise their rights lawfully.

35. Reference is made to paragraph 57 the report. It would help the Government to verify the allegations if the Special Rapporteur could provide detailed information.

36. Reference is made to paragraph 58 and 59 of the report. Due legal process and fair trail rights are guaranteed with regard to the cases mentioned in these paragraphs. With regard to the case of two female teachers, the military has been cooperating in the legal process.

37. Reference is made to paragraph 60 of the report. It is not agreeable to the notion of the Special Rapporteur that there continue to be signs of backtracking. We do not agree with the observations of the Special Rapporteurs saying a growing atmosphere of fear, distrust and hostility. Non-comprehension of the complexity of the issues and the narrow interpretation through religious lens do not help in addressing the issue on the ground. Since 2012 when the inter-communal violence broke out in Rakhine State, the government with the cooperation of community leaders has been able to prevent recurrence of similar incident. Now the two communities have engaged in business activities and school children are together in the classes. The visit of the Special Rappoteur should not leave the communities of Myanmar behind with discord, distrust and incitement.

38. Reference is made to paragraph 61 of the report. Regarding the incident in Laukkai, Kokang Self-Administered Region, the government and the armed forces, supported by the people, have taken necessary measures vis-a-vis the insurgents, who have indiscriminately attacked non-military targets including residential areas, medical hospitals and Red Cross convoys. The situation is back to the normalcy now.

39. Reference is made to paragraph 67(d) of the report. Everyone who wishes to become a citizen of Myanmar can access citizenship through participating in the citizenship verification process. There is no discriminatory process.

40. Myanmar rejects paragraphs 64(a), 64(b), 66(d), 67(e) and 71 (a) as the language and tone contained in the paragraphs are intrusive and inappropriate.

41. Myanmar cannot accept paragraphs 65 (a), 67 (a), 68 (e), 68(f), 68(g), 69(e) and 71(b) as the facts contained in the paragraphs do not reflect the real situation.

42. Due to the limited time available to respond to the Report, we are not able to visit other paragraphs yet. But it should not be construed that we accept them. We still have reservations to many other elements in the Report.